

ESTTA Tracking number: **ESTTA112728**

Filing date: **12/04/2006**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	KELLOGG NORTH AMERICA COMPANY
Granted to Date of previous extension	12/03/2006
Address	One Kellogg Square PO Box 3599 Battle Creek, MI 49016 UNITED STATES
Correspondence information	DAVID A HERDMAN ASSISTANT SECRETARY/CORPORATE COUNSEL KELLOGG NORTH AMERICA COMPANY One Kellogg Square PO Box 3599 Battle Creek, MI 49016 UNITED STATES trademarks@kellogg.com Phone:269-961-2170

### Applicant Information

Application No	78715946	Publication date	06/06/2006
Opposition Filing Date	12/04/2006	Opposition Period Ends	12/03/2006
Applicant	Shamitoff, Joel B. 29 Tall Hedge Irvine, CA 92603 UNITED STATES		

### Goods/Services Affected by Opposition

Class 028. All goods and sevicees in the class are opposed, namely: Bean bag dolls; Bodhidharma dolls with pupils undrawn; Clothes for European dolls; Doll accessories; Doll cases; Doll clothing; Doll costumes; Doll furniture; Doll house furnishings; Doll houses; Dolls; Dolls and accessories therefor; Dolls and playsets therefor; Dolls for playing; Dolls in sitting posture; European style dolls; Furniture for doll's houses; Furniture for dolls' houses; Girls' festival dolls and their fittings; Headgear for dolls; Japanese traditional dolls; Kokeshi dolls; Paper dolls; Playsets for dolls; Rag dolls; Sakura dolls; Shoes for dolls; Soft sculpture dolls; Stuffed dolls and animals; Traditionally dressed western dolls
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Attachments	Opposition Notice scan.pdf ( 6 pages )(990363 bytes )
Signature	/DAVID A HERDMAN/
Name	DAVID A HERDMAN
Date	12/04/2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

KELLOGG NORTH AMERICA COMPANY	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. _____
	)	Serial No. 78/715,946
JOEL B. SHAMITOFF	)	Mark: SNAPABLES
	)	Filing Date: September 19, 2005
	)	Publication Date: June 6, 2006
Applicant.	)	
	)	

NOTICE OF OPPOSITION

Kellogg North America Company, a corporation duly organized and existing under the laws of the State of Delaware, located and doing business at One Kellogg Square, P.O. Box 3599 Battle Creek, MI 49016 (hereinafter "Opposer"), believing that it will be damaged by registration, hereby opposes the above identified application.

The grounds are as follows:

1. Commencing long prior to Applicant's filing date, Opposer and Opposer's predecessor in interest, Kellogg Company, have engaged, and Opposer is now engaged in the manufacture, distribution, sale, advertising and promotion in interstate commerce of a wide range of food products, including various types of cereal based food products, including breakfast cereals and snack foods, as well as an ever expanding range of promotional and licensed goods, including dolls and figurines.

2. Commencing long prior to Applicant's filing date, Opposer and Opposer's predecessor in interest have used, and Opposer is now using Opposer's SNAP and SNAP, CRACKLE, POP trademarks (hereinafter sometimes referred to as Opposer's Marks) in connection with healthy food products, including cereal-based snack food bars and cereal-

derived food products to be used as breakfast food or snack food, as well as an ever expanding range of promotional and licensed goods, including dolls and figurines, distributed and sold by Opposer and/or authorized licensees in commerce.

3. Opposer, is owner of, and will rely herein, upon the following Federal Trademark registrations:

Mark	Registration No.	Issue Date	Goods
SNAP CRACKLE POP & Design	0563358	08/26/1952	Cereal breakfast foods
SNAP, CRACKLE, POP	1038909	05/04/1976	Preparations made from cereals, especially ready-to-eat cereals
SNAP! CRACKLE! POP! & Design	1143592	12/16/1980	Cereal derived food product to be used as breakfast food, snack food or ingredient for making food
SNAP CRACKLE POP	1659058	10/01/1991	Processed cereal derived food product to be used as a breakfast food, snack food or ingredient for making confections
SNAP CRACKLE POP & Design	2062886	05/20/1997	Clothing, namely golf shirts, polo shirts, sports shirts, t-shirts, sweat shirts, night shirts, sweaters, jackets, shorts, caps
SNAP, CRACKLE, POP & Design	2117588	12/02/1997	Printed recipes in the form of booklets, brochures, pamphlets, and cards marketed as a component for food packaging
SNAP, CRACKLE, POP	2117463	12/02/1997	Printed recipes in the form of booklets, brochures, pamphlets, and cards marketed as a component for food packaging
SNAP & Design	2117533	12/02/1997	Printed recipes in the form of booklets, brochures, pamphlets, and cards marketed as a component for food packaging
SNAP CRACKLE POP & Design	2124817	12/30/1997	Clothing, namely golf shirts, polo shirts, sport shirts, t-shirts, sweat shirts, night shirts, sweaters, jackets, shorts, caps
SNAP CRACKLE POP & Design	2338123	04/04/2000	Breakfast cereals; ready to eat cereal derived foods bars, cereal based snack foods; confections, namely candy

Each of these registrations is, in all respects, valid, subsisting and owned by Opposer and is conclusive evidence of Opposer's exclusive right to use such marks in commerce on the goods specified in said registrations.

4. In addition to the registered marks specified above, Opposer shall rely herein upon its and its licensee's common law usage of its other SNAP and SNAP, CRACKLE, POP marks for additional usage on and in connection with various promotional and licensed products and services, including use on "bean bag dolls, doll accessories, doll clothing and dolls" through licensees and as mail offer premiums in support of its well-known food products. Together, such registered and common law uses comprise a valuable family of trademarks, referred to hereafter as Opposer's SNAP Marks.

5. Opposer and Opposer's above identified licensees have made substantial investment in advertising and promoting its goods under Opposer's SNAP Marks since their initial use. Opposer has extensively used, advertised, promoted and offered Opposer's goods bearing Opposer's SNAP Marks to the public through various channels of trade in commerce with the result that Opposer's customers and the public in general have come to know and recognize Opposer's SNAP Marks and associate the same with Opposer and/or goods sold by Opposer and that Opposer's SNAP Marks are famous and distinctive and became famous and distinctive well prior to Applicant's filing its Intent-to-Use trademark application.

6. Upon information and belief, notwithstanding Opposer's rights in and to Opposer's SNAP Marks, on September 19, 2005, Applicant filed an application for registration of the proposed SNAPABLES trademark for "Bean bag dolls; Bodhidharma dolls with pupils undrawn; Clothes for European dolls; Doll accessories; Doll cases; Doll clothing; Doll costumes; Doll furniture; Doll house furnishings; Doll houses; Dolls; Dolls and accessories therefor; Dolls

and playsets therefor; Dolls for playing; Dolls in sitting posture; European style dolls; Furniture for doll's houses; Furniture for dolls' houses; Girls' festival dolls and their fittings; Headgear for dolls; Japanese traditional dolls; Kokeshi dolls; Paper dolls; Playsets for dolls; Rag dolls; Sakura dolls; Shoes for dolls; Soft sculpture dolls; Stuffed dolls and animals; Traditionally dressed western dolls" in International Class 28. Said application was assigned Serial No. 78/715,946.

7. Applicant's SNAPABLES mark so resembles Opposer's SNAP Marks as to be likely when applied to directly competitive or closely related goods to cause confusion or mistake or to deceive purchasers resulting in damage and detriment to Opposer and its reputation.

8. Opposer, upon information and belief, avers that its customers, and the public generally, are likely to be confused, mistaken or deceived as to the origin and sponsorship of Applicant's proposed goods to be marketed under Applicant's alleged SNAPABLES mark and misled into believing that such goods emanate from, are licensed to or are in some way directly or indirectly associated with Opposer, to the detriment of Opposer and its reputation.

9. Opposer, upon information and belief, avers that it will be damaged by the registration by Applicant of the alleged SNAPABLES trademark, as set forth in Applicant's Trademark Application Serial No. 78/715,946, in that the mark is substantially similar to Opposer's SNAP Marks and will be used in connection with good and services that are either directly competitive with or closely related to Opposer's goods and services.

10. Opposer, upon information and belief, also avers that it will be damaged by the registration by Applicant of the proposed SNAPABLES trademark, as set forth in Applicant's Trademark Application Serial No. 78/715,946, in that the alleged mark will dilute the

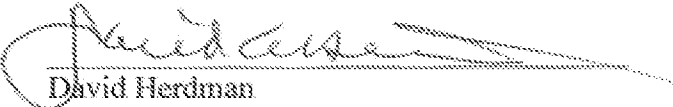
distinctiveness of Opposer's famous SNAP trademarks within the meaning of the provisions of the Federal Trademark Dilution Act of 1995, as amended.

Wherefore, this Opposer, Kellogg North America Company believes and avers that it is being and will continue to be damaged by registration of the proposed SNAPABLES trademark as aforesaid, and prays that said Application Serial No. 78/715,946 be rejected, that no registration be issued thereon to Applicant, and that this Opposition be sustained in favor of Opposer.

Respectfully Submitted,

KELLOGG NORTH AMERICA COMPANY

By:

  
David Herdman  
Assistant Secretary/Corporate Counsel  
Kellogg North America Company  
One Kellogg Square  
P.O. Box 3599  
Battle Creek, MI 49016

Date: December 4, 2006

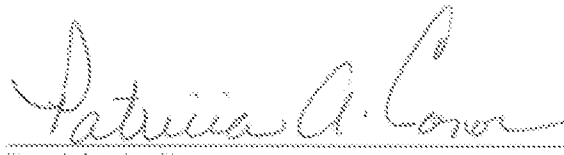
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JOEL B. SHAMITOFF	)	Mark: SNAPABLES
	)	Filing Date: September 19, 2005
	)	Publication Date: June 6, 2006
Applicant.	)	
	)	

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Notice of Opposition has been served on the following individual by mailing said copy on December 4, 2006, via First Class Mail, postage prepaid to:

Joel B. Shamitoff  
29 Tall Hedge  
Irvine, CA 92603

  
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Patricia A. Conor

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